

## **REMARKS**

By this amendment, claims 5, 8, 29 and 35 have been cancelled without prejudice or disclaimer and claims 1-4, 6, 12-14, 16, 19, 23-28, 30-34, 36-38, 42, 44, 45 and 49-52 have been amended. No new claims have been added. Accordingly, claims 1-4, 6, 7, 9-28, 30-34 and 36-52 are pending in the application, of which claims 1, 14, 25, 31, 37, 44, 49 and 51 are independent.

Applicant respectfully submits that the above amendments do not add new matter to the application and are fully supported by the specification. In view of the above Amendments and the following Remarks, Applicant respectfully requests reconsideration and withdrawal of the objections and rejections for the reasons discussed below.

### **Allowed/Allowable Claims**

Applicant appreciates the indication that claims 5, 6, 18, 19, 29 and 30 contain allowable subject matter. While Applicant agrees these claims are patentable over the cited references, Applicant does not agree that patentability resides in each feature exactly as expressed in the claims, nor that each feature is required for patentability of each claim.

### **Objection to the Drawings**

The drawings were objected to for not having a legend such as --Prior Art-- because only what is old is illustrated. This objection is respectfully traversed because,

in this response, Figs. 2 and 3 have been amended to designate with a legend --Prior Art--, as shown in the "Replacement Sheet of Drawings" attached hereafter, as suggested by the Examiner. Accordingly, Applicant respectfully requests withdrawal of the objection to the drawing.

### **Objection to the Specification**

The specification was objected to for several minor informalities therein. This objection is respectfully traversed for the following reasons.

In this response, paragraph [0002] has been amended to include corresponding U.S. Patent information (e.g., patent numbers and issue dates) for the U.S. Patent Applications cited therein. Also, paragraph [0062] has been amended to delete "Please visit ... variations" as suggested by the Examiner. Thus, withdrawal of the objection to paragraphs [0002] and [0062] is respectfully requested.

Regarding claims 37-52, the Examiner stated that the claim limitations cited therein lack antecedent basis in the specification. This objection is respectfully traversed because Fig. 4 and its description in paragraphs [0029] through [0034] provide antecedent basis to the ingress and egress module. Further, Fig. 7B and its description in paragraph [0050] provide antecedent basis for the same feature.

Accordingly, Applicant respectfully requests withdrawal of the objection to the specification.

### **Objection to the Claims**

Claims 1-6, 12, 13, 37, 38, 42 and 45 were objected to for several informalities therein. These objections are respectfully traversed for the following reasons.

Regarding claims 1-6, 12, 13, 37 and 38, in this response, those claims have been amended to replace "adapted to" with --configured to-- as suggested by the Examiner. Also, claim 5 has been incorporated into claim 1 after replacing "from" with --of--, and claim 38 has been amended to insert "release" after "pause," as suggested by the Examiner. Furthermore, claim 42 has been amended to read --wherein the memory comprises buffers.-- in order to address the informality issues raised by the Examiner.

Accordingly, Applicant respectfully requests withdrawal of the objection to claims 1-6, 12, 13, 37, 38, 42 and 45. This amendment is not made for the purpose of avoiding prior art or narrowing the claimed invention, and no change in claim scope is intended. Therefore, Applicant does not intend to relinquish any subject matter by these amendments.

#### **Rejection of Claims under 35 U.S.C. §101**

Claims 31-36, 51 and 52 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Particularly, the Examiner pointed out that a "computer program" recited in the preambles of claims 31-36, 51 and 52 is non-statutory functional descriptive material. Applicant respectfully traverses this rejection for at least the following reasons.

In this response, independent claim 31 has been amended to read "*A computer readable medium* having a stored computer program embodying instructions executable by a computer ..." in order to claim the computer program as part of a statutory

manufacture or machine. The preambles of dependent claims 32-36 have been also amended to read "The *computer readable medium* ..." to be consistent with claim 31

Similarly, independent claim 51 has been amended to read "A *computer readable medium* having a stored computer program embodying instruction ..." Dependent claim 52 has also been amended to be consistent with claim 51.

Support for these amendments may be found at least in paragraph [0061]. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. §101 rejection of claims 31-36, 51 and 52. This amendment is not made for the purpose of avoiding prior art or narrowing the claimed invention, and no change in claim scope is intended. Therefore Applicant does not intend to relinquish any subject matter by these amendments.

#### **Rejection of Claims under 35 U.S.C. §112, Second Paragraph**

Claims 12, 13, 23, 24, 38, 42, 43 and 45 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite. Applicant respectfully traverses this rejection for at least the following reasons.

Regarding claims 12 and 23, in this response, these claims have been amended to replace "the pause threshold" with --a pause threshold-- to address the antecedent basis issue. Also, claims 13 and 24 have been amended to replace "the pause release threshold" with --a pause release threshold-- to address the antecedent basis issue.

Also, the Examiner stated that, in claims 12, 13, 23 and 24, it is unclear how a reserve module reserves "one or more of the buffers" in line 2 that are already in use.

To address this issue, in this response, claims 12, 13, 23 and 24 have been amended to read --one or more of buffers-- to address the ambiguity issue.

Furthermore, the Examiner pointed out that it is unclear how the limitation “the number of the buffers neither served nor enqueued” in line 6 of claims 12, 13, 23 and 24 can be used as a function of the predetermined/pause threshold. To address this issue, claims 12, 13, 23 and 24 have been amended to read --the number of buffers neither reserved nor enqueued.--

Regarding claims 38 and 45, the Examiner stated that it is not clear why the egress module would resume transmission of the frames in response to “the pause frame.” In this response, claim 38 has been amended to replace “the pause frame” with --the pause release frame-- as interpreted by the Examiner. Claim 45 has been amended to delete “in response to the pause frame.”

Regarding claim 42, as mentioned above, this claim has been amended to read “wherein the memory comprises buffers” to address the antecedent basis issue.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. §112, second paragraph rejection of claims 12, 13, 14, 38, 42, 43 and 45. This amendment is not made for the purpose of avoiding prior art or narrowing the claimed invention, and no change in claim scope is intended. Therefore, Applicant does not intend to relinquish any subject matter by these amendments.

#### **Rejection of Claims under 35 U.S.C. §102**

Claims 1-4, 7-17, 20-28, 31-34 and 37-52 stand rejected under 35 U.S.C. §102(b) as being anticipated by U. S. Patent Publication No. 2003/0123393 by

Feuerstraeter, et al. (hereafter "Feuerstraeter"). Applicant respectfully traverses this rejection for at least the following reasons.

In this response, independent claims 1, 14, 25 and 31 have been amended to incorporate allowable dependent claims 5, 18, 29 and 35, respectively, which have been cancelled accordingly. Thus, it is submitted that independent claims 1, 14, 25 and 31 and dependent claims 2-4, 6-13, 15-17, 19-24, 26-28, 30, 32-34 and 36 are patentable over the applied reference.

Regarding independent claims 37, 44, 49 and 51, these claims have been amended to further recite the features of the aforementioned allowable dependent claims. For example, amended independent claim 37 recites:

*"37. A network switching device comprising:  
a plurality of counters for a plurality of classes of  
service, respectively, each counter configured to  
store a count for a respective one of the  
classes of service,  
increment the count when one of buffers  
storing one or more frames of data having the  
respective class of service is enqueued;  
decrement the count after the one or more  
frames of data stored in the one ore more buffers is  
transmitted from the network switching device;  
an egress module configured to generate a pause  
frame indicating one or more of the classes of service to be  
paused when one or more counts for the one or more  
classes of service exceed a predetermined threshold for the  
one or more classes of service; and  
an ingress module configured to receive the pause  
frame;  
wherein, in response to the pause frame, the egress  
module is further configured to cease to transmit the frames  
of data having the one or more classes of service to be  
paused." (Emphasis added)*

It is respectfully submitted that the cited reference fails to disclose or suggest the newly added claimed features in claim 37. Thus, Applicant respectfully submits that independent claims 37, 44, 49 and 51 are patentable over the cited reference. Dependent claims 38-43, 45-48, 50 and 52 would be also patentable for at least the same reasons.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. §102(b) rejection of claims 1, 3, 4, 7-14, 16, 17, 20-15, 27, 28, 31, 33, 34, 37, 39-44 and 46-52.

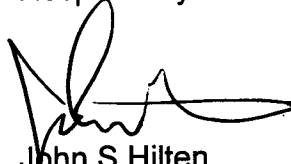
### **Conclusion**

Applicant believes that a full and complete response has been made to the Office Action and respectfully submits that all of the stated objections and grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicant's undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully Submitted,



John S Hilten  
Reg. No. 52518

Date: September 17, 2007

**McGuireWoods LLP**  
1750 Tysons Boulevard  
Suite 1800  
McLean, VA 22102-4215  
Tel: 703-712-5000  
Fax: 703-712-5050  
JSH:WSC/sew

**APPENDIX:** Replacement Drawings Sheets for Figs. 2 and 3

4758378\_1.DOC